

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

C.H. ROBINSON COMPANY,

Plaintiff

v.

Civil No. 97-178-P-C

VINCENT FRUIT, INC., EDWARD B.
HINKLEY, AND EDWARD R.
CHARPENTIER,

Defendants

GENE CARTER, District Judge

ORDER DENYING PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER WITHOUT NOTICE

This matter is before the Court upon Plaintiff's Motion for Temporary Restraining Order without notice pursuant to Rule 65 of the Federal Rules of Civil Procedure. Pursuant to Rule 65(b), a temporary restraining order may be granted without notice to the adverse party only if: "(1) it clearly appears from the specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party . . . can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required." Fed. R. Civ. P. 65(b).

In this case, it appears from the Declaration of Darryl Harper, Manager of the Philadelphia Sales Division of C.H.

Robinson, that Plaintiff is a produce creditor of Defendants under section 5(c) of the Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. § 499e(c), and it has not been paid for produce in the amount of Twenty Thousand Four Hundred Nine Dollars and Fifty Cents (\$20,409.50) supplied to Defendants between January 8 and March 5, 1997. It is not clear from the record, however, that Plaintiff will suffer irreparable injury, loss, or damage. The Court cannot infer from the fact of nonpayment alone that Plaintiff will sustain irreparable harm if the statutory trust is not created. 7 U.S.C. § 499e(c). The only statement in the record regarding irreparable injury is in an Attorney Certification providing "[u]pon information and belief, Defendants are experiencing financial difficulties, and whatever trust assets may be currently available will surely be dissipated should notice of this Motion be given to the Defendants." Attorney Certification Why Notice Should Not Be Required Pursuant To Rule 65(B) (Docket No. 4). The Court finds that this statement is not of evidentiary quality and, thus, is insufficient to support a finding of irreparable injury necessary to grant Plaintiff's motion for a temporary restraining order without notice.

Accordingly, it is hereby ORDERED that Plaintiff C.H. Robinson's motion for Temporary Restraining Order without notice

be, and it is hereby, DENIED. It is further ORDERED that this case be temporarily referred to Chief Judge Hornby for the period of the undersigned's unavailability.

GENE CARTER
District Judge

Dated at Portland, Maine this 22nd day of May, 1997.